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# The Politics of Judicial Reform in Japan: The Rule of Law at Last?

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**SPECIAL ISSUE:  
REFORM IN JAPANESE LEGAL  
EDUCATION**

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**William S. Richardson School of Law**

**SPECIAL ISSUE:**  
**REFORM IN JAPANESE LEGAL EDUCATION**

**The Politics of Judicial Reform in Japan:  
The Rule of Law at Last?**

Setsuo Miyazawa<sup>\*</sup>

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I. TWO STAGES OF POLITICAL CHANGE

The purpose of this paper is to discuss the most recent changes in Japan's political environment that could radically alter its judicial system and legal profession in the near future. Reform of the judicial system and legal profession has now been placed on the national agenda, and the cast of players involved has spread from the traditional groups of legal professionals (judges, prosecutors, and attorneys) to the major actors of the larger political process, namely the Liberal Democratic Party (*Jiyû Minshu Tô*) ("LDP"), the ruling conservative party, and the Federation of Economic Organizations (*Keidanren*), one of the most influential organizations representing business interests.

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To fully appreciate the significance of this recent development, it is helpful to start with the preceding reform of the National Bar Examination (*shihô shiken*), because it entailed a different kind of political process in which major players were limited to the three organizations within the legal profession, namely the Japan Federation of Bar Associations (“JFBA”) (*Nihon Bengoshi Rengôkai*), the Justice Ministry (*Hômushô*), and the Supreme Court (*Saikô Saibansho*). This preceding reform and the recent political change are closely related, but the latter appears to require a far more sophisticated response from the bar.

## II. REFORM OF THE NATIONAL BAR EXAMINATION

The Japanese bar has long been able to maintain an extraordinarily high entry barrier in terms of the extremely competitive National Bar Examination.<sup>1</sup> As late as 1990, only about 500 of the more than 20,000 applicants actually passed the Examination. While the number of successful applicants has gradually risen since then (812 applicants passed in the Examination in 1998 with a passing rate of 2.66%), the number of practicing attorneys is still only 16,369 as of October 29, 1998.<sup>2</sup> The Japanese bar is definitely the smallest among developed countries.

This situation started to change in the late 1980's when the Justice Ministry proposed increasing the number of those who successfully pass the National Bar Examination to make it easier for younger applicants to enter the legal profession. After passing the Examination, candidates spend two years as judicial trainees (*shihô shûshûsei*) at the Legal Training and Research Institute (*Shihô Kenshûjo*) (“Training Institute”), with salaries paid by the government. Judicial trainees choose one of three types of occupations within legal profession once they finish the two-year traineeship. When the Ministry proposed increasing the number of successful applicants, there was a strong suspicion that the Ministry's real motivation was to alleviate the problem of recruiting a sufficient number of judicial trainees to fill prosecutorial positions. Because prosecutors are career bureaucrats of the Justice Ministry, it is better to enter the Ministry as early as possible in order to reach higher positions within the hierarchy of the Ministry. The Ministry may have also wanted to compete against other government agencies that recruit employees immediately after they complete their undergraduate education. One way

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<sup>1</sup> For the situation until the early 1980's, see generally Kahei Rokumoto, *The Present State of Japanese Practicing Attorneys: On the Way to Full Professionalization*, in 2 *LAWYERS IN SOCIETY: CIVIL LAW WORLD* 160 (Richard L. Abel & Philip S.C. Lewis eds., 1988).

<sup>2</sup> See JFBA Web site, at [www.nichibenren.or.jp/english](http://www.nichibenren.or.jp/english) (last visited June 23, 2001).

to ensure recruitment of young lawyers was to make the Examination easier to pass before applicants finish their undergraduate legal education in universities. The Supreme Court concurred. In Japan, the judiciary is also a career bureaucracy.<sup>3</sup>

The JFBA immediately opposed the initiative of the Justice Ministry, arguing that an increase in the number of those passing would reduce the quality of lawyers in Japan. However, the Ministry cleverly presented their initiative in terms of a broader perspective based on the need to produce lawyers who can cope with the increasing complexity and internationalization of Japanese society and on the need to expand public access to lawyers.<sup>4</sup> Thus, in 1987, the Justice Ministry succeeded in setting the agenda. It formed the Informal Committee on Fundamental Problems of the Legal Profession (*Hôshô Kihon Mondai Kondankai*), which consisted of twelve members: two retired judges, a retired prosecutor, a former president of the JFBA, a former bureaucrat, two businesspersons, and five academics. After having obtained a report from the Committee that generally supported its initiative, the Justice Ministry convened the Three-Party Committee on the Legal Profession (*Hôshô Sansha Kyôgikai*) in 1988, which consisted of representatives from the Justice Ministry, the Supreme Court, and the JFBA. The Justice Ministry managed to obtain an agreement in the twenty-second session of the Committee in 1990, and the National Bar Examination Act was amended in 1991.<sup>5</sup> The number of those passing the examination increased from approximately 500 to roughly 600 in 1991, and to 700 in 1993.<sup>6</sup>

The three groups from within the legal profession also agreed to certain numerical targets to be achieved in 1995. More than 30% of applicants passing in 1995 were to be those who have taken the exam

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<sup>3</sup> For the status of Japanese judges, see generally Setsuo Miyazawa, *Administrative Control of Japanese Judges*, in *LAW AND TECHNOLOGY IN THE PACIFIC COMMUNITY* 263 (Philip S.C. Lewis ed., 1994).

<sup>4</sup> For instance, see the statement by the head of the Personnel Department of the Justice Ministry in *HÔMU DAIJIN KANBÔ JINJIKA* [PERSONNEL DEPARTMENT, OFFICE OF THE MINISTER, MINISTRY OF JUSTICE], *SHIHÔ SHIKEN KAIKAKU WO KANGAERU: KIHON SHIRYÔSHÛ* [CONSIDERING THE REFORM OF THE NATIONAL BAR EXAMINATION: A COLLECTION OF BASIC INFORMATION] 8 (1987).

<sup>5</sup> For a collection of various documents and data presented during this process, see *Hômu Daijin Kanbô Shihô Hôsei Chôsabû* [Department of Research on Judicial and Legal System, Office of the Minister, Ministry of Justice], *HÔSÔ YÔSEI SEIDO KAIKAKU: SHIHÔ SHIKEN WA KÔ KAWARU* [REFORM OF THE TRAINING OF LEGAL PROFESSIONS: THE NATIONAL BAR EXAMINATION WILL CHANGE THIS WAY] (1991).

<sup>6</sup> For the situation of the bar around that time, see generally Shozo Ota & Kahei Rokumoto, *Issues of the Lawyer Population: Japan*, 25 CASE W. RES. J. INT'L L. 315 (1993).

within the last three years, and more than 60% of applicants passing in 1995 would be those who have taken the exam within the last five years. The other target was to stabilize such trends so that it becomes likely that more than 40% of applicants passing after 1995 will be those who have taken the exam within the last three years, and that more than 75% of passing applicants after 1995 will be those who have taken the exam within the last five years. A clause was attached in case these numerical targets were not reached, creating a system that may be called “three years and you’re out.” Under this system, 500 applicants will pass based on their exam scores, but the next 200 will be chosen from among those who have taken the exam within the past one to three years.

It became apparent in 1994 that these numerical targets would not be reached in 1995. Since the JFBA opposed the “three years and you’re out” system as discriminatory when it was first proposed, the JFBA leadership attempted to prevent its implementation by agreeing to a further increase in the number of passing applicants. They sought to maintain their negotiating position by agreeing to an increase in the number to 1,000 on the conditions that the number of judges and prosecutors would also be increased, that the legal aid system would be expanded, and that free defense counsel would be provided to pretrial detainees. A further condition and probably most important was the JFBA’s insistence that the existing training system, with its two-year salary, would be maintained. The Board of the JFBA adopted this proposal on October 12, 1994.

However, the media immediately criticized the proposal as an attempt to nullify the existing agreement. Moreover, a group quickly formed within the JFBA that opposed the Board’s decision. Their counter proposal was to maintain the number at 700 and to examine the need to increase the number only after observing expansion of the judicial system as a whole. They succeeded in collecting enough proxies to force the leadership to call a special general meeting on December 21, 1994. This special meeting resulted in disaster. To prevent an overt split in the JFBA, the leaders agreed to reduce the number from 1,000 to 800, while nominally saving their original position by stipulating various conditions of agreement.

JFBA leaders started negotiations with the Justice Ministry and the Supreme Court in April 1995. They came close to agreeing upon 1,000 as the number of passing applicants despite strong opposition within the bar. The remaining issue was whether the two-year training system with salaries paid by the government would be maintained. The Supreme Court and the Justice Ministry apparently did not want to negotiate with the Finance Ministry to increase the capacity of the Training Institute and the budget for salaries under the austere budgetary policy of the government. Instead, the Supreme Court sought to simply shorten the training period in order to accommodate 1,000 trainees with the same budget and facilities.

The JFBA refused to shorten the training period. It held another special general meeting on November 2, 1995, and formally registered its opposition. As a result, negotiations among the three parties within the legal profession collapsed. The three-party committee to manage the National Bar Examination (*Shihô Shiken Kanri Iinkai*) met on December 11, 1995. The JFBA was overruled in the discussions, and the “three years and you’re out” system was implemented in the 1996 examination.<sup>7</sup> In the 1998 examination, the last passing applicant who took the Examination within the last three years ranked 1,300<sup>th</sup>, while the last passing applicant from the remaining applicants ranked 600<sup>th</sup>.

In 1991, based on the agreement reached in 1990, the three groups within the legal profession established the Committee for the System of Training of the Legal Profession and Related Matters (*Hôsô Yôsei Seido Tô Kaikaku Kyôgikai*) (“Reform Committee”) to discuss more fundamental reforms to the Examination and the training of legal professionals. In addition to four judges, five prosecutors, and six attorneys, the Reform Committee also included seven law professors, a journalist, a businessperson, and a president of a national consumer organization. It was unusual for a three-party committee to include members from outside the three groups of the legal profession. The JFBA expected the outside members to support it, but the result was the opposite. Those outside members strongly criticized the JFBA’s unwillingness to increase the number of successful applicants and rejected the JFBA’s proposals. The outside members interpreted proposals to increase the number of judges and prosecutors, to expand the legal aid system, and to provide free legal counsel to pre-indictment criminal detainees as the JFBA’s attempts to prevent increasing the number of passing applicants.

The Reform Committee issued its opinions in November 1995. It agreed only on the need to increase the number of passing applicants in order to increase the number of lawyers. The majority proposed 1,500 as an intermediate target for increasing the number of successful applicants as a step toward a larger increase in the number of lawyers. The majority also recommended a further reduction in the length of practical training by the Training Institute coupled with a strengthening of continuing education of already qualified lawyers. The JFBA’s proposal to limit the increase in the number of passing applicants to 1,000 and to introduce other reforms, including an increase in the number of judges and

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<sup>7</sup> For a story of the development between 1988 and 1997 from the perspective of an attorney who served on the Three-Party Committee, see generally Shigekazu Iwai, *Shihô Shiken Hôsô Yôsei Seido Kaikaku no Keii to Gaiyo* [Process and Outline of the Reform of the National Bar Examination and the Training of Lawyers], 49-1 JIYŪ TO SEIGI [LIBERTY AND JUSTICE] 88 (1998).

prosecutors and a strengthening of the legal aid system, was presented as a minority opinion. The Committee also required the three groups within the legal profession to immediately start discussions to realize fundamental reform of the National Bar Examination and its system of training lawyers.<sup>8</sup>

Following the opinions of the Reform Committee, the Three-Party Committee of the Legal Profession started work in July 1997 and reached an agreement in October 1997.<sup>9</sup> Because the three parties had already agreed in the Reform Committee to increase the number of passing applicants of the National Bar Examination to at least 1,000, the Three-Party Committee decided to increase the number to 800 in 1998 and to 1,000 in 1999. The length of practical training at the Training Institute was to be reduced to one and a half years in 1999. The majority, which consisted of the Justice Ministry and the Supreme Court, presented an intermediate goal of increasing the number of passing applicants to 1,500 in the future, and the three parties agreed to discuss it in 2002. Eight hundred twelve applicants actually passed the Examination in 1998.

The length of practical training at the Training Institute has been a problem as thorny as the number of applicants passing the National Bar Examination since the two-year joint training period was introduced during the postwar reform to equalize the social status of practicing attorneys with that of judges and prosecutors. The proposal by the Supreme Court and the Justice Ministry was simple: reduce the training from two years to one and a half years. Knowing that it could not prevent this reduction, the JFBA leadership proposed providing supplementary training as attorney trainees (*kenshû bengoshi*) to those who have finished the one and a half years in the Training Institute. This proposal was remarkable, because it was the first attempt by the JFBA to directly take part in professional training of future lawyers. This concept attracted favorable commentary from the media. However, the proposal was opposed not only by the Justice Ministry and the Supreme Court, who did not want the involvement of the JFBA, but also by many attorneys who wanted to keep the two-year paid traineeship. The result was a simple

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<sup>8</sup> See *Opinion: Hôso Yôsei Seido Tô Kaikaku Kyôgkai* [Committee on the System of Training of the Legal Profession and Related Matters], 1084 JURISUTO [JURIST] 57 (1996), and accompanying articles.

<sup>9</sup> See *Shihô Shiken Seido to Hôso Yôsei Seido nikansuru Hoso Sansha Gô-i* [Agreement by the Three Parties of Legal Profession on the System of National Bar Examination and Practical Training], 48-12 JIYÛ TO SEIGI [LIBERTY AND JUSTICE] 183 (1997).



reduction of the training period from two years to one and a half years in 1999.<sup>10</sup>

The Justice Ministry dominated the process of the reform until early 1998. The Justice Ministry and the Supreme Court also managed to limit the reform to the number of passing applicants and to the length of practical training. They were able to avoid other issues that required changes to their respective group, such as increasing the number of judges and prosecutors and strengthening the legal aid system, even though scholars and the media often argued that such additional reforms were necessary.

The JFBA was constantly kept on the defensive. It was unable to make any positive proposal of its own until it made its counterproposal of introducing attorney trainees, although this proposal also ultimately failed. As the JFBA was pressed against the wall, it desperately attempted to find a way to realign its battle plan and to shape its own future.

Japanese attorneys are a highly regulated profession: advertisement is virtually prohibited;<sup>11</sup> they may not have more than one law office;<sup>12</sup> a fee schedule is published at least as a guideline; they must obtain permission from the local bar association if they want to join a corporate legal department;<sup>13</sup> and they are prohibited from becoming government employees.<sup>14</sup> Moreover, the small size of the profession has inevitably produced a highly skewed geographical distribution of attorneys.<sup>15</sup> In 1996, for instance, while Tokyo had 7,336 attorneys for the population of 11,772,000 (one attorney per 1,600 people),<sup>16</sup> Shimane Prefecture had

<sup>10</sup> For a discussion of this process from the perspective of the Deputy Secretary General of the JFBA, see generally Kunio Mizuno, *Hôshô Sansha Kyôgikai no Kei to Sansha Gô no Gaiyô* [Process of the Three-Party Committee of Legal Profession and an Outline of the Agreement], 49-1 JIYŪ TO SEIGI [LIBERTY AND JUSTICE] 143 (1998).

<sup>11</sup> Code of Ethics for Practicing Attorneys art. 10, at <http://www.nichibenren.or.jp/english/1att.htm> (adopted on March 2, 1990 at the Extraordinary General Meeting) [hereinafter Code of Ethics]; also Bengoshi ho [Practicing Attorneys Law], Law No. 205 of 1949, art. 31 (Japan), at <http://www.nichibenren.or.jp/english/regulati1.htm> (last amended May 23, 1986).

<sup>12</sup> See Practicing Attorneys Law, *supra* note 11, art. 20.

<sup>13</sup> *Id.* art. 30.

<sup>14</sup> *Id.*

<sup>15</sup> For an economic analysis of the Japanese bar as a failed cartel, see generally Mark J. Ramseyer, *Lawyers, Foreign Lawyers, and Lawyer-Substitutes: The Market for Regulation in Japan*, 27 HARV. INT'L L.J. 499 (1986).

<sup>16</sup> See YASUO WATANABE ET AL., TEKISUTOBUKKU GENDAI SHIHÔ [TEXTBOOK ON THE CONTEMPORARY JUDICIAL SYSTEM] 131 (3d ed. 1997); JAPAN ALMANAC 280 (1998).

only 22 attorneys for the population of 770,000 (one attorney per 35,000 people).<sup>17</sup> Many attorneys have justified these regulations, the extreme difficulty of the National Bar Examination, and the very small number of attorneys by referring to the need for maintaining attorneys' commitment to human rights and social justice provided in Article 1 of the Practicing Attorneys Act.<sup>18</sup>

Fortunately, however, some signs of internal changes in the bar indicate an increasing willingness of a growing number of attorneys to gradually increase their number and to gradually begin to deregulate their practices. An increasingly larger number of attorneys and even some bar association committees have started to reexamine these regulations and problems, and some of them have tried to present a more flexible and expansive view of lawyering. An early example of this was an ambitious book edited by Koji Miyakawa and other attorneys.<sup>19</sup> Miyakawa later became the chair of the editorial committee of *Jiyû to Seigi* (Liberty and Justice), the monthly journal of the JFBA. In 1996, he turned it into an open forum for exchanging different views about the future of attorneys by publishing a series of articles under the series title of *Atarashii Seiki eno Bengoshi Zô* (Visions of Attorneys for the New Century). The contributors in this series included several academics, including this writer, and the articles published in this series were later published as a book.<sup>20</sup> Several bar associations, bar committees, and private groups of attorneys have also presented their views and visions. One example by a bar association committee is a book edited by the Tokyo Bar Association's Special Committee on the Measures for Problems of the Judicial System.<sup>21</sup> An example of participation by a private group of attorneys and scholars is a book published in November 1998 by such a group, including this

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<sup>17</sup> Kazuhiro Yonemoto, *The Shimane Bar Association: All Twenty-One Members Strong*, 25 LAW IN JAPAN 115, 116 (Daniel H. Foote trans., 1995).

<sup>18</sup> See Practicing Attorneys Act, *supra* note 11, art. 1 (A practicing attorney is entrusted with a mission to protect fundamental human rights and to realize social justice).

<sup>19</sup> KOJI MIYAKAWA ET AL., 1 & 2 HENKAKU NO NAKA NO BENGOSHI [ATTORNEYS IN TRANSFORMATION] (1992).

<sup>20</sup> NIHON BENGOSHI RENGÔKAI HENSHÛ IINKAI [EDITORIAL COMMITTEE, JAPAN FEDERATION OF BAR ASSOCIATIONS], ATARASHII SEIKI ENO BENGOSHI ZÔ [VISIONS OF ATTORNEYS FOR THE NEW CENTURY] (1997).

<sup>21</sup> TÔKYÔ BENGOSHIKAI SHIHÔ MONDAI TOKUBETSU IINKAI [SPECIAL COMMITTEE ON THE MEASURES FOR THE PROBLEMS OF JUDICIAL SYSTEM, TOKYO BAR ASSOCIATION], NIJÛ-ISSEIKI NO SHIHÔ [VISIONS OF JUDICIAL SYSTEM IN THE TWENTY-FIRST CENTURY] (1996).

writer.<sup>22</sup> Although there is still strong opposition to any proposal for increasing their number or reducing their self-regulation and the internal decision-making process is still extremely slow, JFBA leaders are clearly moving in that direction.

It is noteworthy that however dramatic the entire process of reform of the National Bar Examination and practical training might appear to many attorneys, it has still largely taken place within a fairly closed circle, mainly consisting of three groups within the legal profession. In contrast, the most recent development in the last two years radically departs from this pattern. The LDP and *Keidanren* have now joined the scene, and the JFBA must find strategies to cope with these more powerful political players who can directly influence the legislative process and who can introduce radical changes through their own initiatives.

### III. DEREGULATION, TRANSPARENCY, AND LEGAL ACCOUNTABILITY

As background for the LDP's and *Keidanren*'s recent proposals for a comprehensive judicial reform, a brief examination of the politics of administrative reform is required.

Administrative reform has been a dominant theme in Japanese politics since the early 1960's.<sup>23</sup> It gained momentum under Prime Minister Yasuhiro Nakasone (1982-87). At that time, the national debt was accumulating rapidly, and Nakasone wanted to reduce the costs of government. Deregulation quickly became the central issue with regard to administrative reform. An Ad Hoc Advisory Council for the Promotion of Administrative Reform (*Rinji Gyôsei Kaikaku Suishin Shingikai*) was formed in 1987, and another Ad Hoc Council came into existence in 1990. In the meantime, the Structural Impediments Initiative talks between the U.S. and Japanese governments began in 1989, and a Policy Action Reform Proposal, which included more than two hundred items, was presented to the Japanese government in 1990. This proposal also included reforms for strengthening the Anti-Monopoly Law, the strengthening of the consumer protection administration, and many other reforms the Japanese public had sought for many years. In 1991, the Ad Hoc Council submitted a report calling for, among other things, the enactment of an administrative procedure act.

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<sup>22</sup> SETSUO MIYAZAWA & NAOYUKI KUMAGAI EDS., NIJÛ-ISSEIKI SHIHÔ ENO TEIGEN [PROPOSALS FOR THE JUDICIAL SYSTEM OF THE TWENTY-FIRST CENTURY] (1998).

<sup>23</sup> For a concise description of the history of administrative reform until 1991, see HIROSHI ABE ET AL., THE GOVERNMENT AND POLITICS OF JAPAN 92 (James W. White trans., 1994).

In other words, the politics of deregulation did not simply try to reduce government intervention. It also created a political opportunity to reexamine many aspects of the postwar political and economic structure, particularly the role of the administrative bureaucracy. Various legal reform movements that had been advanced since the end of the war were finally to realize their long advocated ideas for reform, at least, to a limited extent. Examples of legal reform include the following:

(1) Amendment of the Commercial Code in 1993 to strengthen shareholder rights. For instance, a shareholder derivative suit is now defined as a suit seeking a non-monetary result, because losing board members pay damages to the company and not to shareholder plaintiffs, and the filing fee is fixed at 8,200 yen. Although only 31 cases had been filed between 1950 and 1993, 145 suits were already pending in 1994.<sup>24</sup>

(2) Implementation of the Administrative Procedure Act in 1994. Governmental agencies are required to provide reasons when they reject applications for licenses and permits or make decisions unfavorable to private parties. Governmental agencies are also prohibited from conducting administrative guidance (*gyôsei shidô*)<sup>25</sup> in areas outside their jurisdiction or to mistreat a private party that has refused to comply with administrative guidance.<sup>26</sup>

(3) Implementation of the Products Liability Act in 1995, which introduced strict liability.<sup>27</sup>

(4) Implementation of the new Code of Civil Procedure on January 1, 1998, which strengthened the judicial power to order parties to produce documents.<sup>28</sup>

(5) Two competing bills of the Freedom of Information Act were submitted, and a compromise bill was made law in May 1999.

The above examples were all results of political compromise and were far from what legal reformers had originally envisioned. Nevertheless, they will at least increase, albeit slightly, the transparency of

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<sup>24</sup> See Masaru Hayakawa, *Shareholders in Japan*, in JAPAN: ECONOMIC SUCCESS AND LEGAL SYSTEM 247-48 (Harald Baum ed., 1996).

<sup>25</sup> On administrative guidance, see FRANK K. UPHAM, LAW AND SOCIAL CHANGE IN POSTWAR JAPAN 166-204 (1987); JOHN OWEN HALEY, AUTHORITY WITHOUT POWER: LAW AND THE JAPANESE PARADOX 139-68 (1991).

<sup>26</sup> See generally Ken Duck, Comment, *Now That The Hog Has Lifted: The Impact Of Japan's Administrative Procedures Law On The Regulation of Industry And Market Governance*, 19 FORDHAM INT'L L. J. 1686 (1996).

<sup>27</sup> See generally Nancy L. Young, Comment, *Japan's New Product Liability Law: Increased Protection for Consumers*, 18 LOY. INT'L & COMP. L. J. 893 (1996).

<sup>28</sup> See generally Yasuhei Taniguchi, *The 1966 Code of Civil Procedure of Japan: A Procedure for the Coming Century?*, 45 AM. J. OF COMP. L. 767 (1997).

governmental decision-making and opportunities for the public to seek accountability of government agencies and private corporations. However, recent proposals by the LDP, *Keidanren*, and other organizations go beyond these specific pieces of legislation. They seek to change the judicial system and legal profession in its entirety. Details of these proposals are discussed below.

#### IV. JUDICIAL REFORM AS A NATIONAL AGENDA

The past two years have seen a series of reform proposals on the judicial system and legal profession presented by major players in Japanese politics, namely, the government's Administrative Reform Committee (*Gyôsei Kaikaku Inukai*), the ruling LDP, and *Keidanren*. They have taken the same basic perspective. Because deregulation will reduce government intervention in many aspects of life, the public should be given better access to the judicial system and legal profession to ensure their protection.

The Administrative Reform Committee presented its final opinion to the Prime Minister on December 12, 1997.<sup>29</sup> In addition to deregulation, the report also recommended that public access to government information be radically expanded, consumer protection should be strengthened, anti-monopoly laws be more stringently enforced, and product liability and other appropriate methods be adopted. The logic behind these proposals is that the legal protection of people must be expanded if administrative regulation is to be reduced. Based on these recommendations, the Cabinet adopted a three-year plan to promote deregulation.<sup>30</sup>

Furthermore, governmental committees and even the LDP have recently published reports on judicial and legal reform, which include a proposal to strengthen legal aid. For instance, the Research Committee on Business Law (*Kigyô Hôsei Kenkyûkai*) of the Ministry of International Trade and Industry (*Tsûsanshō*) ("MITP"), which has long been considered the champion of business interests, published a report on June 1, 1998, that urged allowing private legal actions against unfair trade practices and strengthening the legal aid system. The LDP Special Research Committee on the Judicial System (*Shihô Seido Tokubetsu Chôsakai*) published a report on June 15, 1998, proposing comprehensive reform of the judicial

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<sup>29</sup> See Shiryô, *Gyôsei Kaikaku Inukai Saishû Iken (Shô)* [Final Opinions of the Administrative Reform Committee: A Summary], 49-2 JIYÛ TO SEIGI [LIBERTY AND FREEDOM] 170 (1998).

<sup>30</sup> See Kakugi Kettei (Cabinet Decision), *Kisei Kanwa Suishin Sankanen Keikaku (Shô)* [Three Year Plan For Promoting Deregulation: A Summary], 49-5 JIYÛ TO SEIGI [LIBERTY AND FREEDOM] 178 (1998).

system and legal profession in Japan, including a proposal to strengthen legal aid. *Keidanren* also recommended similar reforms in early June 1998. Finally, the MITI Deliberative Committee on Industrial Structure (*Sangyô Kôzô Shingikai*) published a report on July 1, 1998, proposing a comprehensive reform of the judicial system to ensure business compliance with the legal rules of a market economy. The strengthening of legal aid is again included in the recommendations. Among these recommendations, the most important are, of course, those by the LDP and *Keidanren*.

Having received a request from the LDP to present its opinions for judicial reform, *Keidanren* adopted its *Shihô Seido Kaikaku ni tsuite no Iken* (Opinions on the Reform of the Judicial System) at its board meeting on May 22, 1998. This proposal indicated that, as Japan changes from an economy and society dependent upon the administration to a society with a free and fair market, companies and individuals will be required to behave according to the principles of “self-responsibility” (*jiko sekinin*) and “transparency” (*tômeisei*). Therefore, the strengthening of the judicial system as a fundamental part of the infrastructure of economy and society is an immediate priority. The proposal also noted that the judicial infrastructure currently does not possess personnel and institutional capabilities effective for use by the public and companies. Thus, it recommended a series of reforms including the following:

- (1) The number of judges should be increased.
- (2) Non-attorney corporate legal staffs should be allowed to represent their own companies in litigation and provide legal services to related companies.
- (3) Judges should be appointed from among attorneys.
- (4) While legal education has been provided in Japan by undergraduate non-professional law faculties, graduate professional law schools should be established.
- (5) Diet members, their policy assistants (*seisaku hisho*), and corporate legal staffs should be allowed to practice as attorneys without taking judicial traineeship once they passed the National Bar Examination.
- (6) Considering the concentration of attorneys in large cities, monopoly of legal services by attorneys should be abolished. Therefore, judicial scriveners (*shihô shoshi*), who are presently authorized only to prepare legal documents, and patent agents (*benrishi*), who are presently authorized to represent clients only in the proceedings before the Patent Agent, should be allowed to handle some routine legal matters.
- (7) Multidisciplinary partnerships by attorneys and other law-related occupations should be allowed.

According to a spokesperson who attended the Judicial System Symposium of the JFBA on November 6, 1998, these recommendations were presented as policies that *Keidanren* will attempt to realize.

On the other hand, the LDP Special Research Committee on the Judicial System held a series of sessions beginning on June 12, 1997. It invited a wide variety of organizations and individuals to present their views, including *Keidanren*, the JFBA, and several prominent law professors. It published its report entitled *Nijū Isseiki no Shihō eno Tashikana Shishin* [Firm Guidelines for the Judicial System of the Twenty-first Century] on June 16, 1998. The report states that transparent rules and self-responsibility must be realized while maintaining the traditional national virtue of harmony (*wa*), and that the judicial system must be strengthened as a basis for transforming our society into a society based on the principle of self-responsibility and retrospective supervision and remedies. It also states that, in such a society, legal specialists should participate in many aspects of civic life and economic activities, and that the judicial system should be taking appropriate responses against crime. It further recommends a series of reforms that included the following:

(1) Strengthening both the quality and quantity of the legal profession (*hōsō*) and examining the introduction of law schools and the system of qualifying legal professionals.

(2) Examining the system of recruiting judges from among practicing attorneys (*hōsō ichigen*) and examining the system of continuing education of the legal profession.

(3) Recognizing the importance and urgency of strengthening the civil legal aid system.

(4) Examining the criminal defense system from a broader perspective, including the defense of suspects.<sup>31</sup>

(5) Examining the possibility of allowing attorneys to open more than one office and incorporate law firms.

(6) Examining the opening of multidisciplinary partnerships.

(7) Examining public participation in justice (as in introducing a jury and lay judge).

(8) Widening discussion on the judicial system beyond the three parties within the legal profession and fulfilling LDP's responsibility to discuss it in the Diet.

(9) Examining the budget of the courts and the Justice Ministry.

(10) Increasing alternative dispute resolution systems.

(11) Examining the system of judicial review of administrative agencies.

The LDP's recommendations have a more conservative and "law-and-order" tone, but the two sets of recommendations widely overlap. A comprehensive reform of the entire judicial system has suddenly become a top priority in national politics. In the interest of strengthening the legal

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<sup>31</sup> The present system does not provide free counsel to suspects before indictment.

aid system, it is significant that the LDP Committee clearly recommended the expansion of civil legal aid.

Furthermore, on December 22, 1998, the Twenty-First Century Public Policy Institute (*Nijû Isseiki Seisaku Kenkyûjo*), a think tank established with funds from *Keidanren*, published its recommendations, *Toward the Revitalization of Japanese Civil Justice System*, which focused on civil disputes. Although the Institute still recognizes the court as a last resort for resolving civil disputes, it clearly recommends a shift in focus from the court to alternative dispute resolutions (“ADR”) and proposes creating a comprehensive ADR system called the Citizen’s Court. The main function of the Citizen’s Court would be to provide a forum and professional legal assistance for autonomous negotiation. Adjudication might also be provided, if necessary, but that would not be its main function. Providers of professional legal assistance would not be limited to attorneys. Retired judges, foreign attorneys, judicial scriveners, patent agents, administrative scriveners (*gyôsei shoshi*), non-attorney company legal staff, retired employees of financial institutions, and even medical doctors and engineers would be allowed to provide assistance. Eventually, a comprehensive legal service profession would be formed, and the Justice Ministry would supervise it for the sake of their consumers. This proposal is clearly an expanded version of *Keidanren*’s proposal to reduce the legally-protected monopoly of legal services by attorneys, and the image of the new legal service profession appears to be strikingly similar to that of judicial scriveners.

One might wonder what is happening to Japanese legal culture, which some scholars, particularly conservative ones, view as still controlling the attitudes and behavior of a majority of Japanese people. Why do conservatives now want to expand the role of law, the judicial system, and the Japanese legal profession?

As long as businesses could rely on government agencies to promote and protect their interests, businesses tried hard to keep the judicial system and legal profession small and to limit the chances for ordinary people to use them to protect their interests. Now, under a prolonged and severe economic recession, the cost of maintaining the bureaucracy has become prohibitive, and the increasing globalization of the Japanese economy has made the existing system terribly uncompetitive. Therefore, reduction of government bureaucracy and the need to obtain independence from it, in other words, administrative reform, has become a main concern of businesses. Working together with the LDP, business groups led by *Keidanren* have succeeded in producing a final report on administrative reform. It has already moved to the stage of implementation.

The next stage appears to be finding an alternative to bureaucracy to protect business interests. It can be supposed that business groups must



have learned about the use of law through their international business activities, particularly those in the United States. In looking at the Japanese system in a comparative context, they realized how the present system is small, costly, and inefficient. *Keidanren*'s proposal to allow not only judicial scriveners and patent agents but also non-attorney corporate legal staff to represent parties in litigation in particular seemed to signify its concern with efficiency in handling legal matters. Because business groups must have also realized that Japanese judges who joined the judicial bureaucracy immediately after finishing the Training Institute do not understand contemporary business practices, *Keidanren* also proposed that judges be recruited mainly from among experienced practicing attorneys. To promote this type of reform proposal to the public, however, business groups and conservatives needed other elements in the package that would satisfy the needs of ordinary people. Hence, the strengthening of legal aid, for instance, has been included in the proposal.

Whether this hypothetical explanation is correct or not, it is clear that business groups and, to a lesser extent, LDP politicians are indicating that people need more access to the law. It appears that they are trying to create a new orthodoxy in Japanese society. If so, the so-called Japanese legal culture should probably be considered as an invention by the elite of earlier times.<sup>32</sup> It is in this context of rapid and broad political change that the Research Committee on the Legal Aid System (*Hôritsu Fujo Seido Kenkyukai*) of the Justice Ministry studied, deliberated, and finally published its report in March 1998.<sup>33</sup>

It should be noted here that the bar has lost its noble position as the sole supporter of legal aid among major organizations in Japan. Moreover, whereas the bar has no direct access to the legislative process, the conservative elite does. Whether the actual reform is based on the proposal from the bar or from these conservatives, an expanded legal aid system will certainly require a larger number of attorneys to provide legal services. Unlike earlier times when the bar was the only major group proposing reform of legal aid without having much chance of realization, reform of legal aid can actually take place this time. The bar must be ready to expand or otherwise adjust itself in order to meet the needs of an expanded legal aid system.<sup>34</sup>

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<sup>32</sup> For this perspective, see generally Frank K. Upham, *Weak Legal Consciousness As Invented Tradition*, in *MIRROR OF MODERNITY: INVENTED TRADITIONS OF MODERN JAPAN* 48 (Stephen Vlastos ed., 1998).

<sup>33</sup> *Hôritsu Fujo Seido Kenkyūkai* [Research Committee on Legal Aid System], *Hôkokusho* [Report], 49-5 JIYŪ TO SEIGI [LIBERTY AND FREEDOM] 193 (1998).

<sup>34</sup> For an article written by attorneys on this point, see generally Kazuya Koderia & Tokiko Kamei, *Hôritsu Enjo Rippô to Bengoshi Bengoshikai no Aratana Kadai* [Legal

V. THE FINAL REPORT OF THE RESEARCH COMMITTEE ON LEGAL AID  
AND MORE RECENT DEVELOPMENTS CONCERNING LEGAL AID

The Justice Ministry and the Japan Legal Aid Association formed a joint study group on legal aid as early as 1988. The JFBA later joined it. This study group has met fifty times as of June 1994. On the other hand, the Executive Committee of the Judiciary Committee of the House of Representatives (Shûgiin), or the lower and more powerful of the two legislative houses, issued a statement in June 1993 that the Justice Ministry should engage in systematic research for the further development of legal aid in Japan. In response, the Justice Ministry formed the Research Committee on the Legal Aid System in October 1994, including members from the Supreme Court, the JFBA, the Japan Legal Aid Association, and academia. The Justice Ministry immediately excluded criminal legal aid at the pre-indictment stage from the scope of this committee despite the JFBA's demand to include it. Nevertheless, it is fair to say that the creation of this committee in itself was the culmination of efforts by the Legal Aid Association and the JFBA.

The Committee published its final report on March 23, 1998. Although the report did not go as far as to recognize each individual's right to legal aid per se, it did assert that legal aid would substantively guarantee the people's constitutional right to have access to the courts<sup>35</sup> and would fit the spirit (shushi) of the people's rights to wholesome and cultured life,<sup>36</sup> respect as individuals, the pursuit of happiness,<sup>37</sup> and equality under the law.<sup>38</sup> The report declared that a legal aid system could be based on both the ideal of the rule of law and the ideal of a welfare state, so that the state would be responsible for, among other things, establishing a system by legislation and bearing the financial burden appropriate for its responsibility. This was the first time in

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*Aid Legislation and New Tasks For Attorneys and Bar Associations*], 48-9 JIYŪ TO SEIGI [LIBERTY AND FREEDOM] 52 (1997).

<sup>35</sup> KENPŌ [JAPAN CONST.] art. 32 ("No person shall be denied the right of access to the courts").

<sup>36</sup> *Id.* art. 25 ("All persons shall have the right to maintain the minimum standards of wholesome and cultured living").

<sup>37</sup> *Id.* art. 13 ("All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs").

<sup>38</sup> *Id.* art. 14 ("All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin").

Japanese history that a governmental committee recognized the state's responsibility for providing legal aid to indigent people.

At the same time, the report also recognized the responsibility of attorneys to actively participate in legal aid in light of their required commitment to the public interest<sup>39</sup> and their monopoly of legal services.<sup>40</sup> The report does not say explicitly either that the bar should continue to share financial burdens with the state in the future, or that the bar's financial responsibility will be reduced. Some attorneys have expressed concern about this ambiguity.<sup>41</sup>

Following the release of the final report, the Justice Ministry prepared a bill to reform the civil legal aid system, which became a law in April 2000. In anticipation of the establishment of a new public interest corporation (*kôeki hôjin*), which will be required to be more clearly separated from the bar, the Legal Aid Association radically changed the size and composition of its board in April 2000. The number of vice presidents was reduced from a maximum of eight to two, and the number of board members was reduced from a maximum of one hundred to between twenty and twenty-five. The proportion of attorneys was also reduced, to fifty percent of the board. Thus, as of April 1, 2000, there were twelve attorneys on the board (including its president, two vice presidents, and an executive board member) and nine non-attorney board members. Three non-attorney board members were added soon.

The Justice Ministry submitted a budgetary request to the Finance Ministry to increase the government contribution to the legal aid system from 584 million yen (approx. U.S. \$5.3 million)<sup>42</sup> for fiscal year 1999 to 2.2 billion yen (approx. U.S. \$20 million) for fiscal year 2000. Compared to other developed countries, this figure is still very small. Nevertheless, this increase should be welcome. The Judicial Reform Council (*Shihô Seido Kaikaku Shingikai*) ("JRC"), which was established in late July 1999, decided at its second meeting on September 2, 1999, to present a proposal to radically expand the national budget for legal aid as an effort to support the Justice Ministry's initiative. However, the requirement for recipients to pay into the fund is likely to be maintained in principle.

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<sup>39</sup> See Practicing Attorneys Law, *supra* note 11, art. 1.

<sup>40</sup> *Id.* art. 72.

<sup>41</sup> See Koderá & Kamei, *supra* note 34, at 55-56.

<sup>42</sup> This is calculated at the exchange rate of 110 Japanese yen to one U.S. dollar.

## VI. THE JUDICIAL REFORM COUNCIL

As has already been discussed above, the politics of administrative reform have developed into the politics of judicial reform. Business groups led by *Keidanren* have spearheaded this development. When *Keidanren* strongly desires something, the LDP often responds to satisfy its desires. That is exactly what has happened since *Keidanren* presented its proposal for judicial reform in May 1999. In addition to the LDP, a wide range of groups and individuals have presented their views. The media has positively responded and quickly formed a general consensus that the judicial system and legal profession should be more easily accessible and that the bureaucratic nature of the judiciary should be changed. Liberal reformers have also joined in the politics, recognizing an opportunity to introduce fundamental changes in the judiciary for the first time in Japanese history. Even the JFBA is exploring possibilities to seize this opportunity to realize its long-standing goals of abolishing the bureaucratic judiciary and recruiting judges mainly from experienced attorneys under the slogan of *Hôsô Ichigen* [Unified Legal Profession]. As if to test the water, the JFBA leadership made a remarkable decision to invite representatives of *Keidanren* and the LDP to its Seventeenth biennial Judicial Symposium on November 6, 1998, which was held to discuss the very topic of the reform of judicial appointments.

As the culmination of this movement, the late Prime Minister Keizo Obuchi decided to establish the JRC (*Shihô Seido Kaikaku Shingikai*). Unlike most committees on the judicial system in the past, the JRC was to be established not under the Justice Ministry, but under the Cabinet, because the JRC would have to discuss matters presently managed or controlled by the Justice Ministry. In fact, many reformers, particularly business people and some scholars, argued that presently active members of the three groups with the legal profession (*hôsô*) should not be included in the committee. That is essentially the same argument made by reformers who sought administrative reform without the intervention of bureaucrats who staffed the secretariats formed under relevant committees.

The law establishing the JRC was enacted by the Diet on June 2, 1999. Article Two of this law, relating to the mandate of the JRC, went through an interesting process of amendment. The original bill drawn by bureaucrats simply stated that the JRC shall clarify the role of the judicial system in Japanese society in the twenty-first century and shall investigate and deliberate basic policies necessary for the reform of the judicial system and the improvement of its foundations. This does not specify what kinds of reforms are expected. After much maneuvering by politicians and bureaucrats, the Diet inserted a clause that clarified the general direction of the expected reform. This clause specifies that the

reform should include policies to make the judicial system more accessible to the public, to allow public participation in the judicial system, and to enrich and strengthen the legal profession. Both houses of the Diet also attached special resolutions to the law.

The House of Representatives (*Shûgiin*), the more powerful lower house, said that the JRC shall discuss such important matters as unification of legal profession,<sup>43</sup> enhancement of both the quantity and quality of the legal profession, public participation in the judicial system, and the relationship between human rights and criminal justice. The House of Councilors (*Sangiin*), the less powerful upper house, said that the JRC shall pay particular attention to the protection of fundamental human rights, to the realization of the constitutional ideal of the rule of law, and particularly to the perspective of the public as users of the judicial system. As a piece of legislation in Japan, this is nothing other than remarkable. The JRC is mandated to present its final report to the Prime Minister in two years.

Thus, the selection of thirteen members of the JRC became a critical issue. Eventually, the following were selected: three law professors, three senior members of the legal profession (each representing one of the three groups in the legal profession), two business people (each representing *Keidanren* and the Tokyo Chamber of Commerce), the President of the Federation of Private Universities,<sup>44</sup> a female professor in accounting, and a female writer,<sup>45</sup> and one representative each from a labor organization (*Rengô*) and a consumer organization (the Federation of Housewives or *Shufuren*).

The three law professors are: Kôji Satô of Kyoto University, a constitutional scholar, Morio Takeshita, a civil procedure scholar who was formerly at Hitotsubashi University and is presently the President of Surugadai University, and Masahito Inoue, a criminal procedure scholar at the University of Tokyo who is widely known for his works that provided the theoretical underpinning for the recent legislation to legalize wiretapping for criminal investigations. Among these scholars, Satô was heavily involved in administrative reform and known for his work in helping to consolidate central governmental agencies against resistance by bureaucrats. Satô argued that the rule of law failed to materialize in Japan, that administrative reform was the first step to the realization of that ideal, and that judicial reform would complete the transformation of Japanese

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<sup>43</sup> Namely, abolishing career judicial officers and appointing experienced attorneys as judges.

<sup>44</sup> This was the President of Keio University.

<sup>45</sup> The female writer was Ayako Sono, the President of the Japan Foundation, which was formerly known as the Sasagawa Foundation.

society so that autonomous individuals would be able to design their own society through their participation in legislative and judicial processes.<sup>46</sup> Satô was also known for his proposal to introduce graduate professional law schools as the best way to assure the quality of lawyers, whose number will inevitably increase in order to improve public access to justice. It was widely believed that the Prime Minister appointed Satô to chair the JRC. The other two law professors, Takeshita and Inoue, were not known for their views on judicial reform and were widely expected to take traditional views.

Perhaps the best known person of the three senior members from the legal profession is Kôhei Nakabô, an Osaka attorney and former JFBA President. When the bubble economy collapsed and banks were unable to recover their losses from loans to housing loan companies (*jûsen*), the government bailed out those banks by giving them tax money of 685 billion yen (approx. US \$5.7 billion).<sup>47</sup> In return, the government acquired those bad debts and established a special corporation in July 1997 to recover as much money as possible from those debtors who were able to pay. Because those debtors include organized crime and exposing hidden assets of those debtors would be extremely difficult, a person with enormous courage and integrity was needed to head the special corporation. The government asked Nakabô to take the job and he agreed. In the two years and seven months since its establishment, this corporation, the Housing Loan Bad Debts Management System, Inc. (*Kabushiki-Gaisha Jûtaku Kinyû Saiken Kanri Kikô* or *Jûkan*), succeeded in recovering an astonishing 1.55 trillion yen (approx. U.S. \$12.9 billion).<sup>48</sup> Nakabô assembled a group of attorneys and used all conceivable legal instruments.<sup>49</sup> He sued former executives of those housing loan companies for their individual responsibilities in the failure of their companies. He even sued Sumitomo Bank for its role in misleading a housing loan company into lending money to a losing project, while requiring the loan company to open and keep an account in return for its services of introducing customers. Nakabô openly criticized the judicial system for its failure in handling these and other financial issues. He became an undeniable national hero. Although many people

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<sup>46</sup> See, e.g., Kôji Satô, *Jiyû no Hô Chitsujo* [Legal Order for Liberty], in 2 KENPÔ GOJÛNEN NO TENBÔ [2 THE PROSPECT OF THE CONSTITUTIONAL LAW AT ITS FIFTIETH ANNIVERSARY] 1, 54-58 (Kôji Satô et al. eds., 1999).

<sup>47</sup> Based on an exchange rate of 120 Japanese yen to one U.S. dollar.

<sup>48</sup> Based on an exchange rate of 120 Japanese yen to one U.S. dollar.

<sup>49</sup> See, e.g., KÔHEI NAKABÔ, JÛKAN KIKÔ SAIKEN KAISHÛ NO TATAKAI [THE BATTLE OF BAD DEBTS COLLECTION BY THE HOUSING LOAN BAD DEBTS MANAGEMENT SYSTEM, INC.] (1999).

who do not want to introduce real reforms opposed his inclusion in the JRC, the government apparently had no other choice than to select him as a representative of attorneys. At the age of seventy, he left the company and declared that he would work on judicial reform full-time and that he would not take a narrow perspective of representing only the interests of the bar. Instead, he would take a much broader perspective and reflect the concerns of ordinary users.

The two other senior lawyers are a former head of a high court and a former head of a high prosecutor's office. Their views on judicial reform were unknown, but they were widely expected to take more traditional views. Two academics from outside the legal field were also unknown for their views.

The four members representing users of the judicial system, namely business, labor, and consumers, were also relative unknowns. Although each group had prominent and eloquent representatives widely known for their views, those people were not appointed. The last person, Ayako Sono, is a writer who is an ubiquitous figure in government committees and is known for her realistic views on human nature, her barbed comments, and her criticism of the JFBA.

In this group of 13 members, only Satô and Nakabô are clear reformers, but styles differ widely as can be expected from their respective backgrounds. Other members are more or less unknown. If Satô and Nakabô manage to form an alliance and sway a majority of members, the JRC could actually deliver a comprehensive reform package as expected by the special resolutions of the Diet. If they fail, the present system, which has virtually remained unchanged since the Meiji era, will continue in Japan in the twenty-first century.

One should also note that, although the JRC was established under the Cabinet, the Justice Ministry managed to control its secretariat. As of July 27, 1999, the secretariat had sixteen members. Its head, the Secretary General, is a prosecutor from the Justice Ministry. The Justice Ministry has six more members in the secretariat, including a former lower court judge who has been transferred to the Ministry. The Supreme Court sent another lower court judge, while the JFBA sent two attorneys. The remaining members include three from the Finance Ministry (*Okurashô*), and one each from the Education Ministry (*Monbushô*), the MITI, and the Construction Ministry (*Kensetsushô*). No academics are included. Because the JRC members work on a part-time basis, these members of the secretariat are the only people who will be working full-time on judicial reform. The secretariat prepares a list of issues to be discussed and presents materials and drafts to the JRC. As is always the case on government committees, the relationship between the JRC and the secretariat is another key element in determining the outcome of the JRC's efforts.

The JRC held its first meeting on July 27, 1999. The first issue was the selection of the chairman. The Secretary General immediately proposed to select the chairman, but Nakabô argued that it was nonsensical to do so without knowing each member's views. Thus, every member was virtually forced to express some commitment to reform, although several members expressed reservations against wholesale reform, stating that they should carefully examine whether proposed reforms suit the Japanese. After that, Nakabô nominated Satô to serve as the chairperson, denying the secretariat the opportunity to formally nominate Satô. The next issue was the extent to which deliberations should be open to the public. The JRC quickly agreed to publish minutes in both printed form and through the Internet,<sup>50</sup> but they could not reach an agreement on whether they should allow observers. There was a confrontational exchange between Nakabô, who favored opening deliberations to the public, and Sono, who opposed it. Sono also published her objections in newspapers. When the JRC held its second meeting on September 2, 1999, representatives of the three groups within the legal profession were allowed to observe deliberations, but the media was still excluded. The lack of media coverage could seriously hinder the public's ability to present their views in a timely fashion, but the media was finally allowed to observe deliberation through a closed circuit TV.

In any event, there is no guarantee that the JRC will actually present a comprehensive reform proposal. Therefore, to ensure reform, it is important that the public constantly remind its members of why the JRC was formed. It is also important that the public obtain information regarding the activities of the Council. For this purpose, a group of scholars, including this writer, started a monthly journal, *Gekkan Shihô Kaikaku* [Journal of Judicial Reform in Japan], on October 5, 1999.

## VII. MOVEMENT TO INTRODUCE GRADUATE PROFESSIONAL LAW SCHOOLS

The public should be extremely alert to the developments in the JRC, because there appears to be a concerted effort to influence the JRC in order to maintain the status quo. An event concerning the introduction of graduate professional law schools is instructive.

In Japan, law has been taught at undergraduate non-professional law schools.<sup>51</sup> No other academic institutions provide comprehensive

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<sup>50</sup> Minutes are available at the Council's Web site, <http://www.kantei.go.jp/jp/sihouseido>.

<sup>51</sup> See Yasuhei Taniguchi, *Legal Education in Japan*, in *LAW AND TECHNOLOGY IN THE PACIFIC COMMUNITY* 295, 298-302 (Philip S.C. Lewis ed., 1994).



academic legal education. However, a law degree is not required to sit the National Bar Examination. On the other hand, the Training Institute provides only practical training to those who have passed the National Bar Examination. In other words, there is no academic legal education that is directly connected to the training of future lawyers. Therefore, several legal academics, including myself, proposed to introduce graduate professional law schools in Japan.<sup>52</sup> The idea of graduate professional law schools did not receive serious attention, however, because the discussion was limited to the closed circle of the legal profession and law professors.

In 1999, however, the establishment of graduate professional law schools suddenly became a major policy issue, both as part of a set of proposals for judicial reform and as an effort to reform university education in general. Among advocates of judicial reform, Satō, Chairperson of the JRC, is a leading proponent of graduate professional law schools. Both *Keidanren* and the LDP mentioned the idea in their proposals. Among advocates of university reform, the Deliberative Council on Universities (*Daigaku Shingikai*) of the Education Ministry presented its recommendations on October 26, 1998, and recommended that the Ministry examine the possibility of graduate law schools as part of its larger recommendation to strengthen graduate programs in Japanese universities.

Under the present system, even completion of a four-year undergraduate legal education is not a prerequisite for the National Bar Examination. Passing the examination with only six subjects (constitutional law, civil law, commercial law, criminal law, civil procedure, and criminal procedure) is the only requirement for admission to the Training Institute. Given the extreme competitiveness of the National Bar Examination, most applicants simply go to private cram schools immediately after entering college and, in some cases, even before entering college. Most of those who pass the examination in such a manner lack any significant intellectual background outside law or meaningful social experience. Even their legal background is limited and shallow, because they have learned only the patterns of questions and answers in the limited range of subjects included in the Examination. Their legal knowledge lacks a foundation in broader, comprehensive, and, most importantly, critical and reflective examinations of the law, the judicial system, and the legal profession.

After passing the examination, they will receive practical training as judicial trainees for eighteen months. Only six months in total—

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<sup>52</sup> For an eloquent argument by an eminent Anglo-American law professor that Japan has no professional legal education, and that the Training Institute cannot be seen as a professional law school, see generally HIDEO TANAKA, HÂBÂDO RÔ SUKÛKU [HARVARD LAW SCHOOL] 252-55 (1982).

divided into the two three-month periods at the beginning and the end of the traineeship—are spent in classrooms at the Training Institute. These six months are too short to compensate for what most trainees have failed to acquire before coming there, namely broader non-legal intellectual or social backgrounds and broader, comprehensive, and critical examination of the law, the judicial system, and the legal profession. Moreover, principal teachers at the Training Institute are carefully selected mainstream judges who teach only orthodox legal doctrines and practice skills acceptable to them.

I believe that the combination of this system of practical training, appointment of assistant judges immediately after training, and administrative control over judges throughout their careers are the main institutional bases of the extreme form of legal positivism and passivity of most judges in Japan. I have argued for several years that the present system of practical training under the Training Institute should be replaced with a decentralized method of professional legal education in universities, where faculty members, who enjoy both academic freedom and independence from the judiciary, present a wide range of different views to future lawyers.<sup>53</sup>

Currently, trainees will spend one year during the middle of their eighteen months of traineeship as apprentices in local courts, prosecutors' offices, and law firms. Although most of these trainees will eventually become practicing attorneys, they will spend only three months in law offices. I believe that such brief and shallow apprenticeships can never guarantee the quality of lawyers to the public. The present system of professional legal education is totally deficient in this sense.<sup>54</sup>

As part of the broader reform of university education in Japan, the Education Ministry formed the Conference of Cooperating Scholars in the Research on the Method of Legal Education (*Hôgaku Kyôiku no Arikata ni Kansuru Chôsa Kenkyû Kyôyokusha Kaigi*), consisting of fifteen law professors from thirteen law faculties, including seven national and six private law faculties. Kyoto University and Osaka University law faculties held symposia on this issue on July 3 and 5, 1999, respectively, and the University of Tokyo and Kobe University law faculties held their

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<sup>53</sup> For my view on the reform of judicial system and legal profession, SETSUO MIYAZAWA & NAOYUKI KUMAGAI EDS., *NIJÛ-ISSEIKI SHIHÔ NO TEIGEN* [PROPOSALS FOR THE JUDICIAL SYSTEM OF THE TWENTY-FIRST CENTURY] 2-32 (1998).

<sup>54</sup> See Setsuo Miyazawa, *Hôka Daigakuin Jitsugen ni Kitai* [Hoping the Realization of Graduate Profession Law Schools in Japan], *YOMIURI SHIMBUN* (morning ed.), Aug. 10, 1999, at 11. See also Setsuo Miyazawa, *Hôka Daigakuin Rongi No Kasseika To Tômeika No Tameni* [For More Active And Transparent Discussion on Graduate Professional Law Schools], 1 *GEKKAN SHIHÔ KAIKAKU* [MONTHLY JOURNAL OF JUDICIAL REFORM IN JAPAN] 9-13 (1999).

symposia on September 20 and 26, 1999, respectively. Okayama and Hitotsubashi law faculties soon followed.

Because it is unrealistic to allow all of the more than ninety law faculties that admit nearly 50,000 students each year to establish graduate professional law schools and because undergraduate legal education is so well entrenched in the Japanese educational system, radical proposals such as the one I presented are not likely to be adopted. I had proposed the following:

1) Because most undergraduate law faculties teach both law and political science, law programs should be turned into liberal arts programs combining political science and social scientific studies of law and reducing technical and doctrinal courses. This would be comparable to the Legal Studies Program at the University of California at Berkeley.

2) Three-year graduate professional law schools should be established to provide professional legal education as a prerequisite to the National Bar Examination, and their clinical programs should be used as resources for legal aid.

3) Graduate professional law schools should admit students from a broad range of undergraduate educational backgrounds as well as a sizable number of mature students.

4) The Training Institute should be abolished and practical training should be provided by the bar itself, as in the Canadian model.<sup>55</sup>

Less radical proposals have led the debate so far. For instance, Shigeaki Tanaka of Kyoto University Faculty of Law has presented the most influential model.<sup>56</sup> He proposed that the senior (fourth) year in undergraduate law faculties be combined with a two-year graduate program to create a three-year professional law school model. He also proposed that these three-year professional law schools provide education not only for those intending to become lawyers in a narrow sense (judges,

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<sup>55</sup> For more elaborate proposals following the United States model, see generally Yukio Yanagida, *Nihon No Atarashii Hôshô Yôsei (1)(2)* [A New System of The Training of the Legal Profession in Japan], JURISUTO [JURIST], Feb. 1, 1998, at 111 (Part I), and JURISUTO [JURIST], Feb. 15, 1998, at 65 (part II); and Yukio Yanagida, *Rô-Sukûru Hôshiki No Kôshô Ni Tsuite* [On the Proposal of a System of Graduate Professional Legal Education], JURISUTO [JURIST], July 15, 1999, at 72. For an additional proposal to abolish the Training Institute and provide practical training by the bar, see generally Naoya Endô, *Jitsumu Kenkyû Kyôiku No Tôgô Wo Mezasu Hôka Daigakuin Kôshô* [A Proposal on Graduate Professional Law Schools that Combines Practice, Research, and Education, 50-5 JIYÛ TO SEIGI [LIBERTY AND JUSTICE] 24 (1999)].

<sup>56</sup> See Shigeaki Tanaka, *Hôshô Yôsei Seido Kaikaku To Daigaku No Hôgaku Kyôiku* [Reform Of The Legal System Of Training Of The Legal Profession And University Legal Education], in 1 KYÔTOO DAIGAKU HÔGAKUBU HYAKUSHÛNEN KINEN RONBUNSHÛ [PAPERS COMMEMORATING THE CENTENARY OF KYOTO UNIVERSITY FACULTY OF LAW] 53 (Kyôto Daigaku Hôgakubu ed., 1999).

prosecutors, and attorneys) but also for those planning to take the Civil Service Examination or to join corporate legal departments without taking the National Bar Examination. Tanaka further proposed that the Training Institute should provide at least one year of practical training for a few years after the introduction of graduate professional law schools in Japan, although this would eventually be multiplied or abolished if the number of law students increased.

The University of Tokyo law faculty presented a slightly modified version of Tanaka's proposal; it proposed a special course in the third and fourth year of undergraduate law curricula for those interested in professional legal careers and to require completion of those courses as prerequisites for entrance into two-year professional law schools. The Kobe University law faculty presented a more liberal and idealistic model; it proposed a three-year graduate program that would admit graduates of both law and non-law undergraduate faculties, with a condition that non-law graduates take a one-year conversion program before actually beginning a graduate professional program.

The initial number of students in an entering class at graduate professional law school varies from 2,000 to 4,000. All proposals assume that the National Bar Examination will become a purely qualifying examination without a pre-determined quota, and that 70% to 80% of law school graduates will pass.

I am not satisfied with the present trend in reform that is led by more moderate proposals. If the final plan is more moderate than the currently proposed moderate plans, it will effectively result in maintaining the present system of undergraduate law faculties and the Training Institute.

Nevertheless, even under such a moderate scheme, the introduction of graduate legal education that is consciously designed to educate future lawyers in an academic environment will be a revolutionary development in terms of the history of legal education in Japan. Graduate professional law schools in Japan will certainly provide broader, deeper, and more critical education than "cram" schools and will dilute the influence of the Training Institute, which now monopolizes professional legal education.

However, strong opposition is anticipated from the Supreme Court, many members of the bar, and many law professors. The Supreme Court's opposition is easy to understand. It will lose its monopoly on professional legal education if graduate professional law schools are established. Moreover, it will lose control over judicial ideology if universities become the primary institutions for theoretical legal education for those people who clearly intend to become lawyers.

Inside the Bar, the Second Tokyo Bar Association, one of the three bar associations in Tokyo, presented its own proposal on October 12, 1999. It proposed establishing two-year graduate professional law schools

that admitted graduates of both law and non-law undergraduate faculties. It also proposed to abolish the Training Institute and to replace it with the system of two-year practical training as trainee attorneys (*kenshû bengoshi*) under authorized supervising attorneys, a system similar to that existing in the Canadian province of Ontario.

Many members of the bar, however, oppose the idea because they view the present training at the Training Institute as a symbol of the postwar movement to equalize the social status of attorneys with that of judges and prosecutors. Arguably, the other side of that achievement is that the training of future attorneys was also firmly placed in the hands of mainstream judicial bureaucrats, and the programs designed for training attorneys have always been a minor part of the present system. Furthermore, the Justice Ministry and the Supreme Court have already shortened the traineeship from two years to one and a half years. Nevertheless, many attorneys want to maintain the present system of practical training at the Training Institute.

Opposing attorneys also mention several other reasons to halt reform. The present National Bar Examination, which does not even require applicants to have undergraduate legal education, is probably the most open examination to qualify lawyers in the world. Requiring applicants to finish graduate professional law schools before taking the Examination will destroy its present character. Because students will have to pay tuition for two or three more years to study at graduate professional law schools after already having paid tuition for four years at undergraduate law faculties, only the wealthiest people will be able to become lawyers. Only a limited number of universities will be accredited to establish graduate professional lawyers, and a clear hierarchy will be created among universities. Further, once established, graduate professional law schools will inevitably increase the number of attorneys.

Opponents of legal education reform do not mention, however, that only three percent of applicants currently pass the examination, which is supposedly both open and equal, and that most of the applicants spend much time and money in cram schools and attempt to pass the examination several times before ultimately failing. They do not mention that even those few who eventually pass the examination have done little other than cram for the examination, without enriching themselves either through broader study or social experience.

Finally, many law professors also oppose the idea of establishing graduate professional law schools. One obvious reason is the one mentioned above: a clear hierarchy will appear between universities with graduate professional law schools and those without them. Various other reasons are also mentioned. The Education Ministry will control accreditation and impose its policies on curriculum. Doctrinal scholars will expand their control over legal education, and, under their legal

positivism, theoretical, interdisciplinary, and comparative scholars will be excluded from graduate professional law schools. A large number of practitioners will be hired as full-time faculty members, and they will undermine the quality of legal scholarship in Japan. Graduate professional law schools cannot train scholars, and, because Japanese private universities heavily rely on student tuition, most of them cannot afford to open more resource-intensive graduate professional law schools. Private graduate law schools will be clearly placed under national universities in terms of their social prestige. Most American law schools are trade schools without much interest in professional ethics, and graduate professional law schools in Japan will become more like them. Finally, undergraduate legal education should not be abolished because it has played a significant role in Japanese society by educating government officials and business executives and by producing a large number of legally-trained citizens. Again, all of these reasons are usually combined and cited together.

What these opponents fail to mention is that university legal education has largely become irrelevant both for those who want to become lawyers and for those who do not. On the one hand, those who want to become lawyers simply go to cram schools immediately after entering, or even before entering, undergraduate law faculties. Passing the Examination is everything; what they achieve in schools or in society is irrelevant. Although law faculties are constantly introducing new courses or otherwise revising their curricula, those students do not pay much attention to courses other than those included in the National Bar Examination. That is why admission officers of American law schools are often surprised by low grade point averages of Japanese attorneys who have applied to their LL.M. courses.

While teaching at an American law school a few years ago, I was visited by a group of Japanese law students who had just passed the National Bar Examination. Because they had passed the Examination before finishing their undergraduate legal education, they visited some American law schools to use their time before graduation for good purposes. I asked them which professors they liked most. They could not answer; they had spent most of their time in cram schools. Some of them asked me to recommend English-language books on Japanese law. I told them that their universities have excellent libraries, but they did not know how to find books. Such was the caliber of people, some of whom had been praised by the media as the brightest stars to lead Japan into the twenty-first century.

On the other hand, those students who came to law faculties without having a clear idea about their future, except the idea that law would give them a wider range of options than other fields, are simply forced to take a large number of highly technical or sophisticated courses

even though they are not really interested in them or able to understand them. For the most part, they are quite relieved when they graduate, because they no longer need to study law.

Those professors who oppose the idea of graduate professional law schools do not mention these problems. They naturally consider moderate proposals more favorably<sup>57</sup> but still want to prevent the introduction of graduate professional law schools.

Although law professors have failed to take any measures to remedy these problems, cram schools have rapidly extended their tentacles, and some have recently infiltrated university campuses. A few law faculties have actually invited the cram schools to hold courses on their campuses in order to increase the number of their students who pass the Examination. Some universities even give credit for such courses. I criticized this trend as a death knell blow to university legal education in the first issue of the new monthly, *Journal of Judicial Reform in Japan* (*Gekkan Shihô Kaikaku*), without naming the law faculties. In the same issue, a cram school placed an ad, proudly disclosed those law faculties, and encouraged other law faculties to join its network in anticipation of the introduction of graduate professional law schools.

Therefore, there is a clear possibility that the Supreme Court, attorneys, and law professors will form a curious alliance in their opposition to graduate professional law schools, with cram schools being their largest beneficiaries. The situation appears to be analogous to what happened in Korea when a similar proposal was killed in 1995.

Of course, much more discussion is required before a final plan for graduate professional education is adopted. For instance, I proposed that accreditation of law schools should not be done by the fiat of the Education Ministry. An independent accreditation body, including representatives of the legal profession and academia, should be established; every law school should be required to admit a certain number of mature students and should limit the number of admissions from undergraduate programs in the same university, and theoretical, empirical, comparative, and critical approaches should be fully integrated into professional law schools. Moreover, the secrecy of the Conference of Cooperating Scholars in the Research on the Method of Legal Education organized by the Education Ministry has raised speculation that only those universities included in the Conference will obtain professional graduate law schools. I proposed that the Ministry and the JRC should establish a formal committee to openly discuss the issue. These measures actually meet many of the concerns raised by opponents, who still, however, refuse

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<sup>57</sup> See, for instance, how Shigeaki Tanaka's proposal is treated by a leading opponent, Michiatsu Kainō, *Shihô Kaikaku to Rô Sukûru Kôshô* [*Judicial Reform and Law Schools*], 71-8 HÔRITSU JIHÔ [CURRENT LAW JOURNAL] 1, 3 (1999).

to actively participate in the debate. This situation is most unfortunate, because the total failure to establish graduate professional law schools will mostly benefit cram schools and judicial bureaucrats.

Then, a seemingly small but interesting event was revealed in August. Takashi Aoyama, a member of the House of Representatives, on August 3, 1999, sent a set of questions to the Prime Minister regarding methods to increase the number of lawyers in Japan. He asked whether Japan needs at least 50,000 attorneys, whether Japan needs to increase the number of attorneys who are able to work in international settings, and whether American-style law schools should be introduced as an effective method to increase lawyers. The Prime Minister replied to Aoyama on August 31, 1999. To the first two questions, he said that he would take proper measures following deliberation in the JRC. However, on the third question, he clearly took a negative position, indicating that American-style law schools are unacceptable in Japan. The Prime Minister never mentioned the JRC. Is the Prime Minister not undermining the authority of the JRC he himself had established?

Of course, the notion that the Prime Minister wrote such a reply entirely by himself is unrealistic. A bureaucrat must have drafted it. The reply was approved at a cabinet meeting, however, which could mean that neither the Prime Minister nor the Education Minister objected to it or, at least, that they failed to recognize the significance of this reply.

This is just one minor event. It nonetheless vividly reminds us how fragile the foundation of the JRC might be.

## VIII. CONCLUSION

Historically, the Japanese legal system has largely been an instrument of the government to govern citizens. The legal system has rarely played a significant role as an instrument for citizens to challenge the government or big business or to solve disputes among them. Hence, Kôji Satô, Chairperson of the Judicial Reform Council, recently wrote that Japan, even after World War II, has had "rule by law," not the "rule of law."<sup>58</sup> A combination of factors has suddenly made business groups and conservative politicians interested in judicial reforms that can potentially facilitate the rule of law in Japan. Japan is clearly in the midst of a rare opportunity to introduce some tangible reforms to promote the rule of law.

It is also possible, however, that the LDP and *Keidanren* will stop their drive once they have satisfied their immediate goals, without attempting further reforms that will improve ordinary people's access to justice. The only group in Japan that claims to be the champion of

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<sup>58</sup> See *supra* note 46.



ordinary people is the bar. The bar, however, has been extremely reluctant to reform itself regarding a vital issue, namely increasing the number of lawyers. The bar will largely be excluded from the politics of judicial reform, unless it quickly, radically, and publicly changes its position on this issue. In the meantime, the groups that control the present system, namely the Supreme Court and the Justice Ministry, are working hard to influence the JRC. They virtually control the JRC's secretariat. A sizable number of attorneys and law professors also want to maintain the present legal education. This will inevitably result in serving the interests of the Supreme Court and the Justice Ministry as well as those of cram schools.

Much will depend on the battle within and around the JRC. An important development occurred when the JRC met on November 9, 1999. Each member except Satô and Sono, the novelist, individually presented a list of issues to be discussed in the JRC. There was, reportedly, a wide consensus on the need to discuss possibilities of changing the system of judicial appointments. Presently, judges are recruited immediately after they have completed the Training Institute. The proposed system would recruit more experienced candidates and a wider variety of lawyers. Also considered are jury trials or lay judges, a radical increase in the number of lawyers, and a radical expansion of the legal aid system. There has even been a suggestion that legal aid be provided to the criminally accused at the pre-indictment stage. This is a promising sign.

The JRC formally published its self-selected agenda on December 21, 1999.<sup>59</sup> Reformers should quickly, publicly, and loudly express their views to prevent back-pedaling by the JRC. That is what I have been doing, particularly through writing in *Gekkan Shihô Kaikaku* [*Journal of Judicial Reform in Japan*].

### **Postscript<sup>60</sup>**

The Judicial Reform Council presented its final report (*Iken sho*) to Prime Minister Jun'ichi Koizumi on June 12, 2001. Among innumerable recommendations, the JRC proposed the following:

1. In the area of civil justice, (1) reducing the average length of litigation by half; (2) allowing the winning party to recover part of attorney's fees from the losing party under certain conditions; and (3) strengthening civil legal aid.

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<sup>59</sup> *Ronten Seiri* [Points at Issue in the Judicial Reform], at <http://www.kantei.go.jp/foreign/judiciary/0620reform.html> (last visited June 27, 2001) (available in English).

<sup>60</sup> This postscript was written on June 22, 2001.

2. In the area of criminal justice, (1) providing a free defense counsel from the investigation stage, in contrast to the present system, which provides a free defense counsel only after indictment; and (2) making certain decisions by the Prosecution Review Board (*Kensatsu Shinsakai*) binding, in contrast to the present system where its decisions are only advisory.

3. In the area of legal education and the production of legal professionals, (1) establishing graduate professional law schools (*hōka daigakuin*) in 2004, with both standard programs requiring three years and shortened programs requiring only two years for those who have already acquired a high level of legal knowledge; (2) introducing a new National Bar Examination, and increasing the number of those passing to 3,000 people per year by 2010, in contrast to only approximately 990 in 2000; and (3) increasing the total population of active legal professionals (judges, prosecutors, and attorneys) to approximately 50,000 by 2018.

4. In the area of reforms of legal professionals, (1) abolishing or loosening several regulations over attorneys and provision of legal services, including permitting judicial scriveners (*shihō shoshi*) to represent parties in summary courts (*kan'i saibansho*); and (2) requiring, in principle, every assistant judge (*hanjiho*) to obtain practical experience outside the court, appointing more judges from among attorneys, establishing an advisory organization on the appointment of lower court judges by the Supreme Court, and basing the internal evaluation of judges on clearer standards and more transparent procedures.

5. In the area of public participation in the administration of justice, introducing, in certain serious criminal cases, lay assessors (*saiban'in*) who will be randomly selected on a case-by-case basis to decide both fact and law with professional judges, and allowing an appeal from their decision.

Among these and other reforms, reform of legal education and the production of lawyers are priorities, because the JRC considers the production of a far larger number of better-educated legal professionals as the basis for the entire reform. Therefore, the JRC urged the concerned agencies (*kankei kikan*) to set standards for recognizing law schools and allowing graduates to sit in the National Bar Examination as soon as possible.

However, there are various problems in details.

First, undergraduate law faculties will remain in some revised forms. Therefore, universities with an undergraduate law faculty will be tempted to create a graduate law school mainly with a two-year program and fill it with its own undergraduate law students, unless the JRC sets some clear guidelines to prevent it.

The JRC proposed to introduce an LSAT-style aptitude test for admission, but it also mentioned the possibility of introducing a

preliminary examination on legal knowledge for students who apply to a two-year program. If such an examination is introduced in the form of a single national examination, undergraduate law students will simply go to cram schools to prepare for it without learning much in universities, as they do presently for the National Bar Examination.

Although graduation from a law school will be the main qualification to be able to sit in the National Bar Examination, the JRC also mentioned the need to create a “bypass,” where those who cannot afford to go to a law school and those who have already acquired practical legal experience will be allowed to take the Exam without satisfying the law school requirement. Is it possible to introduce such a bypass without creating general disincentive to go to graduate law school? How should we screen people who will be allowed to sit in the National Bar Examination without going to a law school? If the JRC introduced a preliminary examination of legal knowledge, people would again simply go to cram schools.

Finally, although the JRC proposed to create new law schools as “professional schools,” it also proposed that practical apprenticeship (*jitsumu shûshû*) be maintained. If the Legal Research and Training Institute were maintained, would it not become a bottleneck that artificially limits the number of people who pass the National Bar Examination?

Therefore, details still remain undecided. Much will depend on the legislative process that is expected to commence very soon.